

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
--	---

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Western District of Texas on the following

☐ Trademarks or ☒ Patents. (☐ the patent action involves 35 U.S.C. § 292.)

DOCKET NO. 1:11-cv-00929 LY	DATE FILED 10/27/2011	U.S. DISTRICT COURT Western District of Texas
PLAINTIFF DDB Technologies L.L.C.		DEFENDANT Fox Sports Interactive Media, LLC
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 see attached		
2 5,526,479		
3 5,671,347		
4 6,204,862		
5 7,373,587		

In the above—entitled case, the following patent(s)/ trademark(s) have been included.

DATE INCLUDED	INCLUDED BY
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK HOLDER OF PATENT OR TRADEMARK
1	
2	
3	
4	
5	

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK William G. Putnicki	(BY) DEPUTY CLERK 	DATE 10/28/2011
------------------------------	--	--------------------

Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

41. DDB is in compliance with any applicable marking and notice provisions of 35 U.S.C. § 287, with respect to the '862 Patent.

42. DDB has never licensed Fox Sports under any of the DDB Patents or otherwise authorized Fox Sports to practice the '862 Patent.

43. Fox Sports has infringed and continues to infringe one or more of the claims of the '862 Patent by making, selling, offering for sale, and/or using live game simulation products and/or services (including, for example, Fox Sports's GameTrax product/service depicted in Exhibit E) covered by claims of the '862 Patent, without DDB's authorization in violation of 35 U.S.C. § 271(a).

44. On information and belief, Fox Sports has knowledge of the existence of the '862 Patent. At a minimum, for instance, Fox Sports has knowledge of the '862 Patent as a result of its discussions with DDB (or its predecessor-in-interest, Instant Sports) concerning one or more of the DDB Patents. In addition, on information and belief, Fox Sports has knowledge of the '862 Patent based on DDB's lawsuits against Fox Sports's competitors for infringement of the DDB Patents and/or the marking of competing live simulation products/services with the DDB Patents.

45. Fox Sports has in the past and continues to promote, advertise, and provide access to its live game simulation products/services to users, customers, and potential customers by, at a minimum, providing links to its live game simulation products/services on its msn.foxsports.com website. *See, e.g.,* Exhibit F.

46. On information and belief, Fox Sports has engaged in this conduct with the intent to lead others to engage in conduct that Fox Sports knew would constitute an infringement, in violation of 35 U.S.C. § 271(b).

47. On information and belief, Fox Sports also engaged in this conduct while knowing that its live game simulation products and/or services were especially made or especially adapted for use in an infringement of the '862 Patent and were not staple articles or commodities of commerce suitable for substantial non-infringing use, in violation of 35 U.S.C. §271(c).

48. Fox Sports's infringing activities have damaged and continue to damage DDB. On information and belief, Fox Sports will continue to infringe the '862 Patent, causing irreparable harm to DDB unless enjoined by this Court.

49. In view of its knowledge of the '862 Patent, Fox Sports's continued acts of infringement are willful.

**COUNT IV
INFRINGEMENT OF THE '587 PATENT**

50. DDB repeats and realleges each of the allegations of paragraphs 1-49 as if set forth in full.

51. DDB is in compliance with any applicable marking and notice provisions of 35 U.S.C. § 287, with respect to the '587 Patent.

52. DDB has never licensed Fox Sports under any of the DDB Patents or otherwise authorized Fox Sports to practice the '587 Patent.

53. Fox Sports has infringed and continues to infringe one or more of the claims of the '587 Patent by making, selling, offering for sale, and/or using live game simulation products and/or services (including, for example, Fox Sports's GameTrax product/service depicted in Exhibit E) covered by claims of the '587 Patent, without DDB's authorization in violation of 35 U.S.C. § 271(a).

54. On information and belief, Fox Sports has knowledge of the existence of the '587 Patent. At a minimum, for instance, Fox Sports has knowledge of the '587 Patent as a result of its discussions with DDB (or its predecessor-in-interest, Instant Sports) concerning one or more of the other DDB Patents. In addition, on information and belief, Fox Sports has knowledge of the '587 Patent based on DDB's lawsuits against Fox Sports's competitors for infringement of the DDB Patents and/or the marking of competing live simulation products/services with the DDB Patents.

55. Fox Sports has in the past and continues to promote, advertise, and provide access to its live game simulation products/services to users, customers, and potential customers by, at a minimum, providing links to its live game simulation products/services on its website. *See, e.g.*, Exhibit F.

56. On information and belief, Fox Sports has engaged in this conduct with the intent to lead others to engage in conduct that Fox Sports knew would constitute an infringement, in violation of 35 U.S.C. § 271(b).

57. On information and belief, Fox Sports also engaged in this conduct while knowing that its live game simulation products and/or services were especially made or especially adapted for use in an infringement of the '587 Patent and were not staple articles or commodities of commerce suitable for substantial non-infringing use, in violation of 35 U.S.C. § 271(c).

58. Fox Sports's infringing activities have damaged and continue to damage DDB. On information and belief, Fox Sports will continue to infringe the '587 Patent, causing irreparable harm to DDB unless enjoined by this Court.

59. In view of its knowledge of the '587 Patent, Fox Sports's continued acts of infringement are willful.

REQUEST FOR JURY TRIAL

60. Pursuant to FED. R. Civ. P. 38, DDB demands a trial by jury of any issue triable of right by a jury.

PRAYER FOR RELIEF

THEREFORE, DDB prays for relief against Fox Sports as follows:

A. Judgment that Fox Sports has infringed and continues to infringe one or more claims of the DDB Patents in violation of 35 U.S.C. § 271(a), (b), and (c), and that such infringement is willful;

B. An award of damages incurred by DDB as a result of Fox Sports's infringement of the DDB Patents, said damages to be trebled in view of the willful and deliberate nature of the infringement;

C. A preliminary and permanent injunction enjoining Fox Sports, its officers, agents, servants, employees and attorneys, and other persons in active concert or participation with Fox Sports from further infringement of the DDB Patents;

D. An assessment of costs, including reasonable attorney fees pursuant to 35 U.S.C. § 285, and prejudgment interest against Fox Sports; and

E. Such other and further relief as this Court may deem just and proper.

Dated: 10/ 27/ 2011

Respectfully submitted,

/s/ James G. Ruiz

Michael D. Gannon (gannon@mbhb.com)
Leif R. Sigmond, Jr. (sigmond@mbhb.com)
Rory P. Shea (shea@mbhb.com)
Paul A. Kafadar (kafadar@mbhb.com)
John D. Smith (smith@mbhb.com)
McDonnell Bochen
Hulbert & Berghoff LLP
300 South Wacker Drive, Suite 3100
Chicago, Illinois 60606
Tel: (312) 913-0001
Fax: (312) 913-0002

James G. Ruiz (jruiz@winstead.com)
TX Bar No. 17385860
Winstead PC
401 Congress Avenue, Ste.2100
Austin, TX 78701
Tel: (512) 370-2818
Fax: (512) 370-2850

Counsel for Plaintiff
DDB Technologies L.L.C.

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

DDB TECHNOLOGIES L.L.C.,

Plaintiff,

v.

FOX SPORTS INTERACTIVE MEDIA, LLC,

Defendant.

Civil Action No. **11-cv-929**

Judge: _____

JURY DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT AND DAMAGES

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff DDB Technologies, L.L.C., files this Complaint for Patent Infringement and Damages against Fox Sports Interactive Media, LLC, and would respectfully show the Court as follows:

THE PARTIES

1. Plaintiff DDB Technologies, L.L.C. ("DDB"), is a Texas limited liability company having its principal place of business at 107 Laura Lane, Austin, Texas 78746, which is within this judicial district.

2. Defendant Fox Sports Interactive Media, LLC ("Fox Sports") is a Delaware limited liability company with its headquarters at 10201 W. Pico Blvd. Los Angeles, CA 90035.

3. Fox Sports transacts business within the State of Texas and in this judicial district, and has committed acts of patent infringement as hereinafter set forth within the State of Texas and this judicial district. Such business includes, without limitation, Fox Sports's operation of its

Internet website, msn.foxsports.com, which is available to, accessed by, and subscribed to by users, customers, and potential customers of Fox Sports within this judicial district.

JURISDICTION AND VENUE

4. This is a civil action for patent infringement arising under the patent laws of the United States, Title 35, United States Code. This Court has jurisdiction under 35 U.S.C. §§ 271, *et seq.*, and 28 U.S.C. §§ 1331 and 1338.

5. This Court has personal jurisdiction over Fox Sports pursuant to TEX. CIV. PRAC. & REM. CODE § 17.041 *et seq.* Personal jurisdiction generally exists over Fox Sports because Fox Sports has minimum contacts with this forum as a result of business regularly conducted within the State of Texas and within this district, and, on information and belief, specifically as a result of, at least, committing the tort of patent infringement within Texas and this district. Personal jurisdiction also exists because, on information and belief, Fox Sports has entered into numerous contracts with customers in Texas for products and services offered by Fox Sports, which products and services involve, among other things, the knowing and repeated transmission of data over the Internet. This Court's jurisdiction over Fox Sports comports with the constitutional standards of fair play and substantial justice and arises directly from the Fox Sports's purposeful minimum contact with the State of Texas.

6. Venue is proper in this Court under 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. § 1400(b).

7. Although Fox Sports has engaged in business in the State of Texas, Fox Sports has not designated an agent for service in the State. Therefore, the Secretary of the State is an agent for service of process for Fox Sports pursuant to TEX. CIV. PRAC. & REM. CODE § 17.044.

THE PATENTS-IN-SUIT

8. On June 11, 1996, United States Patent No. 5,526,479 ("the '479 Patent"), entitled "Method and Apparatus for Broadcasting Live Events to Another Location and Producing a Computer Simulation of the Events at that Location," was duly and legally issued by the United States Patent and Trademark Office to David R. Barstow and Daniel W. Barstow. A copy of the '479 Patent is attached hereto as Exhibit A.

9. On September 23, 1997, United States Patent No. 5,671,347 ("the '347 Patent"), entitled "Method and Apparatus for Broadcasting Live Events to Another Location and Producing a Computer Simulation of the Events at that Location," was duly and legally issued by the United States Patent and Trademark Office to David R. Barstow and Daniel W. Barstow. A copy of the '347 Patent is attached hereto as Exhibit B.

10. On March 20, 2001, United States Patent No. 6,204,862 ("the '862 Patent"), entitled "Method and Apparatus for Broadcasting Live Events to Another Location and Producing a Computer Simulation of the Events at that Location," was duly and legally issued by the United States Patent and Trademark Office to David R. Barstow and Daniel W. Barstow. A copy of the '862 Patent is attached hereto as Exhibit C.

11. On May 13, 2008, United States Patent No. 7,373,587 ("the '587 Patent"), entitled "Representing Sub-Events With Physical Exertion Actions," was duly and legally issued by the United States Patent and Trademark Office to David R. Barstow and Daniel W. Barstow. A copy of the '587 Patent is attached hereto as Exhibit D.

12. The '479, '347, '862, and '587 Patents are referred to hereinafter as "the DDB Patents."

13. David R. Barstow and Daniel W. Barstow assigned the DDB Patents to DDB. DDB owns all right, title and interest in and to the DDB Patents.

FACTS

14. In the 1980s and continuing through the early 1990's, Dr. David R. Barstow, a Partner in and President of DDB, along with his brother, Daniel W. Barstow, a Partner in DDB, developed a method and apparatus for providing remote viewers with simulations of live sporting events such as baseball, football, and basketball games, etc. All of the technology required to produce such simulations is embodied in the DDB Patents.

15. In the late 1990's, Dr. David R. Barstow along with other representatives of DDB's predecessor-in-interest, Instant Sports, met with representatives of Fox Sports, and drafted an agreement between Instant Sports and Fox Sports that specifically referred to one or more of the DDB Patents.

16. In the 2000 to 2003 timeframe, representatives of DDB contacted and/or met with representatives of Fox Sports on multiple occasions regarding Fox Sports's potential interest in purchasing or licensing one or more of the DDB Patents. Fox Sports then informed DDB that Fox Sports did not wish to purchase or license any of the DDB patents.

17. Without DDB's permission, Fox Sports began providing live game simulation products and/or services that embody the invention(s) set forth in the DDB patents. At a minimum, for instance, Fox Sports has provided and continues to provide products/services through its msn.foxsports.com website—including the "GameTrax" product/service—that enable remote users to watch a simulation of live sporting events such as baseball games, football games, basketball games, etc. See, e.g., Exhibit E-F.

18. On June 15, 2004, DDB initiated a patent infringement suit against MLB Advanced Media, L.P. ("MLBAM"), a competitor of Fox Sports in the live game simulation products/services industry, alleging that MLBAM's live game simulation product(s)/service(s) infringed the '479, '347, and '862 Patents. This suit received press attention in the industry and resulted in the marking of MLBAM's competing live game simulation product(s)/service(s) with one or more of the DDB Patents.

19. Between April 8, 2010 and June 28, 2010, DDB initiated patent infringement suits against several competitors of Fox Sports in the live game simulation products/services industry (including, for example, ESPN Inc.), alleging that each competitor's live game simulation product(s)/service(s) infringed the DDB Patents. These suits received press attention and resulted in the marking of other competing live game simulation product(s)/service(s) with one or more of the DDB Patents.

**COUNT I:
INFRINGEMENT OF THE '479 PATENT**

20. DDB repeats and realleges each of the allegations of paragraphs 1-19 as if set forth in full.

21. DDB is in compliance with any applicable marking and notice provisions of 35 U.S.C. § 287, with respect to the '479 Patent.

22. DDB has never licensed Fox Sports under any of the DDB Patents or otherwise authorized Fox Sports to practice the '479 Patent.

23. Fox Sports has infringed and continues to infringe one or more of the claims of the '479 Patent by making, selling, offering for sale, and/or using live game simulation products and/or services (including, for example, Fox Sports's GameTrax product/service depicted in

Exhibit E) covered by claims of the '479 Patent, without DDB's authorization in violation of 35 U.S.C. § 271(a).

24. On information and belief, Fox Sports has knowledge of the existence of the '479 Patent. At a minimum, for instance, Fox Sports has knowledge of the '479 Patent as a result of its discussions with DDB (or its predecessor-in-interest, Instant Sports) concerning one or more of the DDB Patents. In addition, on information and belief, Fox Sports has knowledge of the '479 Patent based on DDB's lawsuits against Fox Sports's competitors for infringement of the DDB Patents and/or the marking of competing live simulation products/services with the DDB Patents.

25. Fox Sports has in the past and continues to promote, advertise, and provide access to its live game simulation products/services to users, customers, and potential customers by, at a minimum, providing links to its live game simulation products/services on its msn.foxsports.com website. *See, e.g.*, Exhibit F.

26. On information and belief, Fox Sports has engaged in this conduct with the intent to lead others to engage in conduct that Fox Sports knew would constitute an infringement, in violation of 35 U.S.C. § 271(b).

27. On information and belief, Fox Sports also engaged in this conduct while knowing that its live game simulation products and/or services were especially made or especially adapted for use in an infringement of the '479 Patent and were not staple articles or commodities of commerce suitable for substantial non-infringing use, in violation of 35 U.S.C. § 271(c).

28. Fox Sports's infringing activities have damaged and continue to damage DDB. On information and belief, Fox Sports will continue to infringe the '479 Patent, causing irreparable harm to DDB unless enjoined by this Court.

29. In view of its knowledge of the '479 Patent, Fox Sports's continued acts of infringement are willful.

**COUNT II
INFRINGEMENT OF THE '347 PATENT**

30. DDB repeats and realleges each of the allegations of paragraphs 1-29 as if set forth in full.

31. DDB is in compliance with any applicable marking and notice provisions of 35 U.S.C. § 287, with respect to the '347 Patent.

32. DDB has never licensed Fox Sports under any of the DDB Patents or otherwise authorized Fox Sports to practice the '347 Patent.

33. Fox Sports has infringed and continues to infringe one or more of the claims of the '347 Patent by making, selling, offering for sale, and/or using live game simulation products and/or services (including, for example, Fox Sports's GameTrax product/service depicted in Exhibit E) covered by claims of the '347 Patent, without DDB's authorization in violation of 35 U.S.C. § 271(a).

34. On information and belief, Fox Sports has knowledge of the existence of the '347 Patent. At a minimum, for instance, Fox Sports has knowledge of the '347 Patent as a result of its discussions with DDB (or its predecessor-in-interest, Instant Sports) concerning one or more of the DDB Patents. In addition, on information and belief, Fox Sports has knowledge of the '347 Patent based on DDB's lawsuits against Fox Sports's competitors for infringement of the

DDB Patents and/or the marking of competing live simulation products/services with the DDB Patents.

35. Fox Sports has in the past and continues to promote, advertise, and provide access to its live game simulation products/services to users, customers, and potential customers by, at a minimum, providing links to its live game simulation products/services on its msn.foxsports.com website. *See, e.g.,* Exhibit F.

36. On information and belief, Fox Sports has engaged in this conduct with the intent to lead others to engage in conduct that Fox Sports knew would constitute an infringement, in violation of 35 U.S.C. § 271(b).

37. On information and belief, Fox Sports also engaged in this conduct while knowing that its live game simulation products and/or services were especially made or especially adapted for use in an infringement of the '347 Patent and were not staple articles or commodities of commerce suitable for substantial non-infringing use, in violation of 35 U.S.C. §271(c).

38. Fox Sports's infringing activities have damaged and continue to damage DDB. On information and belief, Fox Sports will continue to infringe the '347 Patent, causing irreparable harm to DDB unless enjoined by this Court.

39. In view of its knowledge of the '347 Patent, Fox Sports's continued acts of infringement are willful.

COUNT III INFRINGEMENT OF THE '862 PATENT

40. DDB repeats and realleges each of the allegations of paragraphs 1-39 as if set forth in full.